

DECISION MEMORANDUM

TO: COMMISSIONER KEMPTON
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: SCOTT WOODBURY
DEPUTY ATTORNEY GENERAL

DATE: MAY 6, 2010

SUBJECT: CASE NO. IPC-E-10-15 (Idaho Power)
FIRM ENERGY SALES AGREEMENT – CARGILL INCORPORATED

On May 5, 2010, Idaho Power Company (Idaho Power; Company) filed an Application with the Idaho Public Utilities Commission (Commission) requesting approval of a 10-year Firm Energy Sales Agreement between Idaho Power and Cargill Incorporated (Cargill) dated May 4, 2010 (Agreement).

Under the terms of the Agreement, Cargill will sell and Idaho Power purchase electric energy generated by the Bettencourt B6 Dairy Anaerobic Digester Power Project (B6 Facility) located near Jerome, Idaho. The location of the B6 Facility is more particularly described as Section 19, Township 8 S, Range 16 E, Boise Meridian, Gooding County, Idaho. Appendix B-2. Cargill warrants that the B6 Facility is a qualifying facility (QF) under applicable provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA). ¶ 3.2.

The B6 Facility is already providing energy to Idaho Power under an existing Non-Firm Schedule 86 Agreement (June 30, 2009). ¶ 4.1. The nameplate rating of the B6 Facility is 2.25 MW. Appendix B-1. The Maximum Capacity Amount is 2.13 MW. Appendix B-4. Under normal and/or average conditions, the Facility will not exceed 10 aMW on a monthly basis. Should the Facility exceed 10 aMW on a monthly basis, Idaho Power will accept the energy (Inadvertent Energy) that does not exceed the Maximum Capacity Amount; however, the Company will not purchase or pay for the Inadvertent Energy. ¶ 7.5.

Cargill has elected a Scheduled Operation Date 30 days past the date the Agreement is approved by the Commission. Appendix B-3.

The Agreement contains the non-levelized published avoided cost rates approved in Order No. 30744 and comports with the terms and conditions of Order Nos. 30738 (SAR non-fueled cost variables) and 30415 (daily load shape adjustment). ¶ 7.1.

Idaho Power notes that the purchase rates set forth in the Agreement, Order No. 30744, had on the May 4, 2010, date of contract signing been replaced by the lower rates of Order No. 30125 approved by the Commission on March 16, 2010, in Case No. GNR-E-10-01. Idaho Power recites that the Commission has previously determined grandfathering eligibility for (older and higher) published avoided cost rates by requiring (1) a signed power sales agreement be executed prior to the change in rates; or (2) a meritorious complaint filed with the Commission demonstrating project maturity and that but for the actions of the utility a sales agreement would have been signed prior to the change in rates. Although not filing a complaint with the Commission, by signing the Agreement and voluntarily presenting it to the Commission, Idaho Power has nevertheless concluded that Cargill meets the second test of the Commission and should be entitled to the rates established by Order No. 30744.

In determining that Cargill was entitled to grandfathering under the higher rates of Order No. 30744, the Company concluded that Cargill satisfied the following grandfathering criteria prior to March 16, 2010:

a. Interconnection and Transmission

- i. Filed an interconnection application; and
- ii. Received and accepted an interconnection feasibility study report for the project and paid any requested study deposits (or established credit) for the next phase of the interconnection process in accordance with Schedule 72; and
- iii. Received confirmation from Idaho Power that transmission capacity is available for the project and/or received an accepted transmission capacity study results and cost estimates.

b. Purchase Power Agreement

- i. An agreement was materially complete and would have been executed by both parties prior to March 16, 2010, and except for routine Idaho Power final processing, an agreement would have been executed prior to March 16, 2010.

It is Idaho Power's opinion that the Cargill B6 Facility meets all of the above-referenced criteria. The Interconnection and Transmission criteria were met at the time the B6 Facility was interconnected with Idaho Power to make sales of non-firm energy under the Schedule 86 Agreement.

With respect to the Power Purchase Agreement criteria, the Company contends that Cargill and Idaho Power had finally resolved all outstanding contract issues and that Cargill had agreed to execute the Agreement after being notified that the B6 project had passed Idaho Power's final internal review process. Both parties expected that final review to be a relatively straightforward process given that the parties had recently executed a substantially similar Firm Energy Sales Agreement for the Dry Creek Dairy Anaerobic Digester Project which was approved by the Commission in Order No. 31034 issued on April 1, 2010. The B6 Facility Agreement was commercially and legally similar to the Dry Creek Firm Energy Sales Agreement. Approximately 10 days prior to March 16, 2010, Idaho Power's management started the process of reviewing the agreed-upon draft for final approval and execution. The final Sarbanes-Oxley review process and the routine internal approval had not been completed as of March 16, 2010.

In further support of its request for grandfathering, Idaho Power states that the B6 Facility is a small project that is already certified as a QF and is currently selling power to Idaho Power under a Schedule 86 contract. The Agreement also contains the most recent contract terms and conditions, including the liquidated damages and security provisions previously approved by the Commission in the contracts for the Arena Drop hydro project and the Dry Creek anaerobic digester projects contracts, Order Nos. 31060 and 31034, respectively.

Agreement ¶ 21.1 provides that the Cargill Agreement will not become effective until the Commission has approved all of the Agreement's terms and conditions and declared that all payments Idaho Power makes to Cargill for purchases of energy from the Facility will be allowed as prudently incurred expenses for ratemaking purposes.

COMMISSION DECISION

Commission Staff and Idaho Power recommend that the Application in Case No. IPC-E-10-15 be processed pursuant to Modified Procedure, i.e., by written submission rather than by hearing. Reference IDAPA 31.01.01.201-204. Does the Commission agree with the recommended procedure?



Scott Woodbury
Deputy Attorney General

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